

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED

OCT 19 2015

CLERK, U.S. DISTRICT COURT

By _____
Deputy

Lisa A. Biron,
Plaintiff,

V.

Civil Action No. 4:15-CV-205-0

Jody R. Upton, Warden,
FMC-Carswell, et al.,
Defendants.

Motion to Reconsider and for Clarification

On September 28, 2015, this Court granted Plaintiff leave to proceed in forma pauperis ("IFP") on appeal (Ct. App. Case No. 15-10684). Plaintiff was granted leave to proceed IFP for the same case in the district court on March 19, 2015.

Plaintiff requested the Court refrain from deducting an additional 20 percent from her inmate trust account and to allow her to pay the appellate fee sequentially after the district court fee was paid off.¹

The Court did not acknowledge this request and is now garnishing 40 percent of Plaintiff's meager trust account deposits for the same case.

¹ Without outside help from her family, Plaintiff would absolutely not have been able to afford to produce the brief for the appeal of the related case (No. 15-10607) now before the Fifth Circuit, and similarly will not be able to afford to pay for the required copies for the production of the brief for this appeal because of this additional garnishment. Copying and postage for the last brief totaled almost \$200.00.

The Plaintiff objects to this additional garnishment as both unconstitutional interfering with her access to the court (see supra p. 1, n.1) and as a violation of Title 28 U.S.C. § 1915(b)(2) of the Prison Litigation Reform Act ("PLRA").

She asks the Court to reconsider and allow her to pay these fees sequentially. Alternatively, the Plaintiff asks the Court to stay its garnishment order for the appellate court fee pending the outcome of Supreme Court Case No. 14-844, Bruce (Pinson) v. Samuels, 761 F.3d 1 (D.C. Cir. 2014), where the Supreme Court will resolve the circuit split on the proper application and interpretation of § 1915(b)(2)'s trust account garnishment provision, and determine whether the statute caps the allowable deduction at 20 percent regardless of the number of cases for which a plaintiff-inmate owes filing fees as the Second, Third, and Fourth Circuits have held. Oral argument is scheduled for November 4, 2015.

A stay is warranted because the present order that effectively garnishes 40 percent of Plaintiff's trust account-deposits is likely a violation of the PLRA.

In addition, the Plaintiff seeks clarification on the amount of the appellate filing fee. The Court's order states that the balance due, after the initial filing fee of \$23.35, is \$481.65 (totaling \$505.00). But the next sentence states the total of the appellate filing fee as \$455.00, which would make the balance due \$431.65.

WHEREFORE, the Plaintiff requests this honorable Court reconsider and allow her to make payment for the fees sequentially or stay its order

pending the Supreme Court's ruling in Bruce; clarify the amount due;
and grant such other relief as is deemed just and equitable.

Respectfully submitted,

10/15/15
Date

Lisa Biron
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Fort Worth, TX 76127

Certificate of Timely Filing

I hereby swear, under penalty of perjury, that this Motion was
mailed, firstclass postage prepaid, in the inmate legal mail system on
this date.

10/15/15
Date

Lisa Biron
Lisa Biron

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